IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.727 OF 2006

M/s.Kunj Glass Pvt. Ltd. .. Appellant.
Vs.
E.S.I.Corporation .. Respondent.

Mr.Bapat i/b Mr.A.A.Fatangare for the appellant.
Mr.H.V.Mehta for the respondents.

CORAM : D.B.BHOSALE, J.
DATED : 13TH DECEMBER, 2006

P.C.:

. Heard learned counsel for the parties.

2. Admit. Mr.Mehta, learned counsel waives service for the respondents. By consent of the learned counsel for the parties, the appeal is taken up for final hearing forthwith.

3. The appeal is directed against the order dated 31.1.2006 by which the Employees Insurance Court, Pune has rejected miscellaneous application no.ESI No.5 of 2005 filed by the appellant seeking restoration of application ESI no.7 of 2000 which was dismissed for want of prosecution on 23.7.2004. The court below framed the following two issues:

> "1. Whether the application itself is maintainable ?
>
> 2. Whether the applicant has shown sufficient cause that he was prevented from

appearing when the proceeding of Application (ESI) No.7/2000 was called for hearing ?"

. Both the above issues were answered in the negative. Insofar as the first issue is concerned there is no dispute that the provisions of section 5 of the Limitation Act, apply to the application filed under Rule 26(5) of Bombay Employees' Insurance Court Rules (1959) as held by this court in **Regional Director, the Emplyees' State Insurance Corporation Vs. Shashikant and Anr. 1984 LAB.I.C.527**. In view thereof the finding on the first issue deserves to be set aside. Order accordingly.

4. Insofar as the second issue is concerned even if it is accepted that the delay had not been explained by the appellant satisfactorily, looking to the overall facts and circumstances of the case, in my opinion, the interest of justice would be met by the following order:

. The delay in filing the application, for restoration of application (ESI) No.7/2000 which came to be dismissed for non prosecution on 23.7.2004, shall stand condoned subject to payment of cost of Rs.1500/- to be remitted to the respondent within two weeks from the date of receipt of this order and on the condition that the appellants shall deposit

remaining 50% of the total amount with respondent no.1 - Corporation within six weeks from today. Mr.Bapat, learned counsel for the appellants agreed to deposit the aforesaid amount within the time stipulated. The 50% amount directed to be deposited by this order would be in addition to 50% of the amount already deposited by the appellant under section 75(2-B) of the Employees' State Insurance Act, 1948. The court below shall endeavour to dispose of main application bearing application (ESI) 7/2000 as expeditiously as possible and preferrably within period of six months from the date of deposit of the amount as aforestated. However, if the appellant fails to deposit the amount and costs the application (ESI) No.7/2000 shall stand dismissed for non prosecution automatically. If the appellants ultimately succeeds in the present proceedings the respondents shall refund the amount directed to be deposited by this order with 6% interest within a period of two months from the date of disposal of the proceedings. The first appeal, accordingly, stands disposed of in the aforestated terms. No costs.

(D.B.Bhosale, J.)